

Rappel Augusthi Vs. Gopalan Ramakrishna Panicker and ors.

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SooperKanoon Citation : sooperkanoon.com/718192

Court : Kerala

Decided On : Nov-12-1968

Reported in : AIR1970Ker188

Judge : M.U. Isaac and; P. Narayana Pillai, JJ.

Acts : [Transfer of Property Act, 1882](#) - Sections 52; Kerala Land Reforms Act, 1964; [Kerala Compensation for Tenants Improvements Act, 1958](#) - Sections 4, 4(1), 5, 5(1) and 5(3)

Appeal No. : Appeal Suit No. 255 of 1968

Appellant : Rappel Augusthi

Respondent : Gopalan Ramakrishna Panicker and ors.

Advocate for Def. : M. Krishnan Nair and; P. Gopalakrishnan Nair, Adv.

Advocate for Pet/Ap. : R. Krishnaswami Iyer, Adv.

Disposition : Appeal dismissed

Judgement :

Narayana Pillai, J.

1. The principal question raised in this appeal is whether the appellant who took a lease of an item of property pending a suit for partition of a Marumakkathayam

tarwad from one of the parties to that suit is entitled to the benefits of Act I of 1964; the Kerala Land Reforms Act, and Act 29 of 1958, the Kerala Compensation for Tenants Improvements Act.

2. Stated in its barest essentials the position which the facts disclose is as follows : The suit for partition was filed in the year 1102 M. E, The preliminary decree was passed on 2-4-1108 M. E. corresponding to 12-12-1932. The 43rd defendant, a member of the tarwad, leased out in 1113 M.E. an item of property covered by the decree schedule and in his possession to the appellant who was not a party to the suit. A commission was issued pursuant to the preliminary decree. Accepting the report, Ext. IX, of the commissioner the property in dispute was allotted by the final decree which was passed on 28-2-1958 to the share of the deceased 1st defendant whose heirs are Respondents 1 to 4 in this appeal. The final decree provided that if in respect of any item it had been found in Ext. IX that improvements had been effected the value for the same should be paid by the person to whom the property was allotted to the person from whom he took possession of the same. In respect of the property in dispute it was not found in Ext. IX that any improvement had been effected on it by any person and so no value was fixed in it as compensation for improvements. When Respondents 1 to 4 applied for delivery of possession of the property the appellant obstructed. Then they applied for delivery of the property after removal of the obstruction. The appellant filed his objections to it. According to him he was in possession of the property as a lessee from the year 1100 M. E. onwards and it was during the currency of it that the lease-deed of 1113 M. E. was executed. He contended that he was a lessee entitled to fixity of tenure under Act I of 1964, that he had effected valuable improvements on the property, that in any event, he should be paid compensation for those improvements under Act 29 of 1958 and that the application for delivery of possession of property was barred by limitation. The lower Court found that the appellant's case that he was in possession of the property as a lessee from 1100 M.E. was not true and that he came into possession of the property only under the lease-deed of 1113 M.E. After dismissing his objections the Court ordered delivery of the property to Respondents 1 to 4. It is from that order that the present appeal has been filed.

3. The correctness of the finding entered by the Judge below that the appellant came into possession of the property only as lessee of the 43rd defendant under the lease-deed of 1113 M. E. was not disputed by the learned counsel appearing for him. Therefore we have to proceed on the assumption that that finding is correct.

4. With that introduction we shall examine the first submission made on behalf of the appellant that he was a lessee entitled to fixity of tenure under Section 13 of Act I of 1964 and that therefore he could not be dispossessed of the property in execution in the present case. On the date of the lease in favour of the appellant the 43rd defendant who granted the lease was only one of the several members of the tarwad which owned the property and a preliminary decree for partition had already been passed. On the date of suit the property was in the direct or in other words, actual physical possession of one of the members of the tarwad. It was that possession that was sought to be recovered in the suit after partition by metes and bounds. The lease in favour of the appellant is on the face of it hit by the rule of lis pendens. The leasing out of the property by the 43rd defendant to the appellant cannot in any way, adversely affect the right of the party to whom the property was allotted by the final decree in partition to get physical possession of the property because at the commencement of the suit he was entitled to get it. Otherwise it would be impossible to bring any suit to a successful end. The appellant may have had no notice of the pendency of the suit. But the question of notice is immaterial as the rule of lis pendens is based on expediency and not notice. The point hardly admits of elaboration. As against the other parties to the suit the lease is invalid and that being the legal position can they not in execution of the decree ignore it? There is nothing in Act I of 1964 which gives validity to transactions which are invalid under Section 52 of the Transfer of Property Act. At this moment we have in mind, if we may say so with respect, the following instructive passage from the Judgment of our learned brother Mr. Justice Madhavan Nair in *Sankaran Nambiar v. Pilliathiri Amma*, 1961 Ker LT 639:--

'Under Section 52 of the Transfer of Property Act, after the institution of the suit any dealing with the property involved therein by a party thereto is void in relation to the reliefs granted to parties by the decree therein, It follows that the lease in

Ext. B-I executed by the Karnavan, who was the first defendant in the partition suit, regarding a property sought to be partitioned as in direct possession of the tarwad and decreed as such cannot avail against the plaintiffs to whom it was allotted by the final decree therein. Act 4 of 1961 does not purport to override the provisions of Section 52 of the Transfer of Property Act or the laws relating to validity of contracts. Agrarian Reform does not contemplate legislation of every illegal transaction entered into by tenants.'

The appeal, A. Section 29 of 1962, filed from that decision was dismissed by a Division Bench- In our judgment as against Respondents 1 to 4 the appellant cannot be allowed to claim the benefits of Act 1 of 1964.

5. Now we turn to his claim under Act 29 of 1958. According to him he is a tenant entitled to compensation for -improvements under Section 4 of that Act. Can he be allowed to claim it before eviction when there is no decree as contemplated by Section 5(1) or order as contemplated by Section 5(3) of the Act awarding him value of improvements? That depends on the construction of Sections 4 and 5 of the Act. We shall now read those Sections so far as they are material for the present purpose.

'4. (1) Every tenant shall, on eviction, be entitled to compensation for improvements which were made by him, his predecessor-in-interest or by any person not in occupation at the time of the eviction who derived title from either of them and for which compensation had not already been paid; and every tenant to whom compensation is so due shall notwithstanding the determination of the tenancy or the payment or tender of the mortgage money or premium, if any, be entitled to remain in possession until eviction in execution of a decree or order of Court:

X X X X X x'

'5 (1). In a suit for eviction instituted against a tenant in which the plaintiff succeeds and the defendant establishes a claim for compensation due under Section 4 for improvements, the Court shall ascertain as provided in Sections 7 - 16, the amount of the compensation and shall pass a decree declaring the amount so

found due and ordering that on payment by the plaintiff into the Court of the amount so found due and also the mortgage money or the premium, as the case may be, the defendant shall put the plaintiff into possession of the land with the improvements thereon.

XX X X X X

(3) The amount of compensation for improvements made subsequent to the date up to which compensation for improvements has been adjudged in the decree and the re-valuation of an improvement, for which compensation has been so adjudged, when and in so far as such revaluation may be necessary with reference to the condition of such improvement at the time of eviction as well as any sum of money accruing due to the plaintiff subsequent to the said date for rent, or otherwise in respect of the tenancy, shall be determined by order of the Court executing the decree and the decree shall be varied in accordance with such order.

X X X X X X'

Section 4(1) consists of 2 parts. The first part says that a tenant is entitled to compensation for improvements made on the property. The second part says that all tenants coming under the first part shall be entitled to remain in possession until eviction in execution of a decree or order of Court. Under Section 5(1) in suits for eviction where tenants establish their claim under Section 4 for compensation for improvements Courts are directed to pass decrees after ascertaining the value of improvements in accordance with Sections 7 to of the Act. Under Section 5(3) of the Act decrees passed under Section 5(1) fixing compensation for improvements can be varied but such variation has to be preceded by an order of the execution Court and that order can be passed only for some limited purposes. They are for awarding compensation for improvements made subsequent to the date up to which compensation for improvements had been adjudged and revaluation of improvements for which compensation had been fixed in the decree. In *Narayanan Nair v. Kamalakshi Amma*, 1963 Ker LT 1091, our learned brother Mr. Justice Raman Nayar held that where no compensation had been adjudged by the decree it would not be open to the execution Court to grant value for improvements on the

strength of Section 5(3) of the Act. This was followed by the same learned Judge in *Padmanabha Pillai v. Sarojini Amma*, 1966 Ker LT 252, and both these decisions were followed in the Full Bench decision in *Varkey Paily v. Augusthy*, 1967 Ker LT 189 = (AIR 1967 Ker 247). A, reading of Sections 4 and 5 of Act 29 of 1958 together makes it abundantly clear that the decree referred to in Section 4(1) is that contemplated by Section 5(1) and the order referred to in Section 4(1) is that contemplated by Section 5(3). In that view a tenant entitled to compensation under Section 4(1) is not entitled to remain in possession if there is no decree or order as contemplated by Sections 5(1) and 5(3) fixing for him value of improvements. In the instant case there is neither a decree as contemplated by Section 5(1) nor an order as contemplated by Section 5(3) of Act 29 of 1958 entitling the appellant to retain possession of the property under Section 4 (1) of the Act. Hence the appellant is not entitled under Act 29 of 1958 to claim before eviction compensation for improvements alleged to have been made by him on the property.

6. The only other point argued on behalf of the appellant by his learned counsel was that the application filed by Respondents 1 to 4 for delivery of possession of property was barred by limitation. This point does not appear to have been pressed on his behalf at the time of hearing before the Judge below. We therefore, decline to consider it.

7. In the result, the appeal is dismissed with costs.